UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.1/9
TD/B/COM.1/EM.3/3
11 November 1997

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and Services,
and Commodities
Second session
Geneva, 17-21 November 1997

REPORT OF THE EXPERT MEETING ON POSITIVE MEASURES TO PROMOTE SUSTAINABLE DEVELOPMENT, PARTICULARLY IN MEETING THE OBJECTIVES OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

Held at the Palais des Nations, Geneva,
from 3 to 5 November 1997

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GE.97-52056

It was the view of experts that the Meeting provided an extremely fruitful exchange of views. The complexity of the issues discussed was, however, such that no agreement could be reached. It was therefore decided to reflect the proceedings in a chairperson's summary.

I. CHAIRPERSON'S SUMMARY OF THE EXPERTS' INFORMAL DISCUSSIONS

The Expert Meeting on Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements was held from 3 to 5 November 1997. Four key issues were discussed: (i) the case for positive measures; (ii) experiences in accessing environmentally sound technologies and capacity-building; (iii) financial resources for promoting sustainable development, and the role of market-based instruments in promoting sustainable development; and (iv) the role of incentives for biodiversity conservation and for promoting sustainable development.

The case for positive measures

1. A wide range of facilitating measures aimed at promoting sustainable development could be considered as "positive measures". However, many experts were of the opinion that there was no need to arrive at a precise definition. Several experts rejected the notion that trade measures pursuant to multilateral environmental agreements (MEAs) would, by definition, be considered negative measures. It was noted that while trade measures might play a role in inducing countries to become parties to MEAs, positive measures were essential in helping developing countries implement the objectives of MEAs.

2. It was also noted by some that the debate on the use of trade measures pursuant to MEAs, particularly in the WTO Committee on Trade and Environment (CTE), should not be separated from the debate on positive measures, and that trade and positive measures could be adopted as an integrated package. Some noted, however, that while positive measures were generally needed in the case of MEAs, trade measures were used only in a few MEAs.

3. Several experts noted that the promotion of equity and cost-effectiveness in the implementation of MEAs are key objectives of positive measures.

4. The representative of UNEP said that the development of an agenda on positive measures was especially important in the light of the slow progress in developing and implementing an environmental agenda and in tackling global environmental problems.

5. Throughout the discussions on the major issues there were experts who stressed the particular relevance of integrated and multi-stakeholder approaches to the design and implementation of packages of positive measures. Several experts noted that such packages could and should be tailored to the needs of developing countries as well as to the specific objectives they are aimed at achieving.

6. Some experts noted that there was a need to examine trade incentives, including trade preferences for environment-friendly products to promote sustainable development.

7. There was some discussion on the consideration of positive measures in different forums. It was noted by some that the WTO had a role to play in considering market access issues as well as the relationship between the generation and transfer of technology and the WTO rules on intellectual property rights (IPRs). Others noted that positive measures in the context of specific MEAs should be considered by the respective Conferences of Parties (CoPs). The Executive Head of the Ozone Secretariat pointed out that UNCTAD's work on positive measures could provide useful inputs to the work of the Montreal Protocol. Several experts said that UNCTAD should focus on a conceptual and empirical analysis of packages of positive measures. In this context, the representative of UNEP made reference to the UNCTAD-UNEP Memorandum of Understanding. Some experts proposed that UNCTAD's work on positive measures should, as far as possible, be linked to trade. Others proposed that the link to development should be maintained.

8. One expert proposed the creation of well-defined machinery to discuss and monitor the implementation of positive measures to promote sustainable development, based on international cooperation and a sense of mutual responsibility.

Experience in accessing environmentally sound technologies

9. Experts examined the roles of both the Government and the private sector with regard to access to and transfer of environmentally sound technologies (ESTs). Several experts noted that the selection of technologies is a multi-criteria process involving a balance between environmental, economic, technical, financial and social considerations. Some experts noted that processes for verification and follow-up to determine whether the selection of appropriate technologies had indeed been effective require fine-tuning in the different MEA bodies. Several experts stressed that the challenge in technology transfer is to find cost-effective solutions while taking into consideration the industrial strategies of the recipient countries.

10. Some experts stressed the importance of an enabling environment conducive to both technology transfer and foreign direct investment (FDI), in both developed and developing countries. The protection of IPRs and the encouragement of FDI were referred to in this context. Capacity-building for the effective use of ESTs should form an important aspect of technology transfer.

11. Discussions on technology transfer focused largely on experiences with access to and transfer of technology in the case of the Montreal Protocol. They evolved around four key issues: (i) forms of government-private sector partnership and cooperation; (ii) the need to find a balance between the private and social benefits of IPRs in the context of global environmental problems; (iii) the special requirements of small and medium-size enterprises (SMEs); and (iv) the linkage with financial mechanisms.

Government-private sector partnership and cooperation

12. Experts discussed the financial mechanisms contained in some MEAs, such as the Montreal Protocol, to facilitate the transfer of technology. Some experts noted that Article 10A of the Montreal Protocol commits developed country parties to transfer technologies to beneficiary developing countries on fair and most favourable terms. An inconclusive discussion ensued on how Governments could ensure effective implementation of this commitment, given that technology is

largely owned by the private sector. Some experts noted that Governments' ability to do so was limited.

13. Many experts stressed the need to strengthen the involvement of industry from both developed and developing countries in the negotiation and implementation of MEAs with a view to reducing obstacles to access to and transfer of ESTs. Several suggested that private stakeholders could be involved in the design of country programmes for the implementation of MEAs at the national level.

14. One expert informed the meeting that the Thai Government had held a trilateral conference with the Japanese Ministry of International Trade and Industry and the United States Environmental Protection Agency at which all parties agreed to urge companies operating in Thailand, but based either in Japan or the United States, to adopt phase-out schedules for their Thai operations similar to those in their home countries.

Balancing private and social benefits of IPRs

15. The particular situation of three developing countries where domestic companies dominate the production of ozone-depleting substances (ODS) and their substitutes was highlighted. An example was given of specific problems encountered by one of these countries in accessing environmentally sound technologies, held by very few transnational corporations (TNCs), at "reasonable" cost. A lively debate developed on whether these problems were related to IPR protection granted to the technology owner, or, on the contrary, to "weak" IPR regimes, discouraging an investment climate, or to inadequate payments by companies in the recipient countries. Some experts pointed out that similar concerns about accessing ESTs for ODS substitutes also prevailed in other producing countries, which have strong IPR regimes and have received large amounts of FDI.

16. It was further argued by some experts that IPRs may confer a double advantage on the technology owners in the particular case of MEAs that set time-bound environmental targets by granting monopoly rights through patent protection on the one hand, and by generating a large and pressing demand for their technologies on the other hand through the conditions established by the MEA.

17. In this context, some experts suggested that financial mechanisms could play a role in filling the gap between the interests of technology owners and the requirements and abilities of licensees. Two suggestions by some experts in this regard were the creation of a technology rights bank under the financial mechanism of the Montreal Protocol and/or the involvement of the producing TNCs in the initial stages of negotiations.

Small and medium-size enterprises

18. Many experts, including representatives from the Multilateral Fund and its implementing agencies, recognized that SMEs may have difficulties in taking full advantage of positive measures. Among the difficulties cited were lack of finance, lack of technologies appropriate for SMEs, and lack of information available to SMEs. Many experts recommended that ways and means be explored to enhance the fullest possible utilization of positive measures by SMEs, such as flexibility in the application of cost-effectiveness criteria, technical assistance and specific incentives.

Linkage with financial mechanisms

19. Several experts noted that both FDI and official development assistance (ODA) could be effective in facilitating transfer of technology in general. Some experts noted that FDI flows go to only a small number of developing countries and therefore cannot fully meet the technological needs to address global environmental problems. Therefore, some experts considered that ODA could be used to leverage FDI, e.g. by creating infrastructure, providing guarantees, reinsurance and/or export credits. Several experts noted, however, that more work was needed to examine the extent to which FDI and ODA had effectively contributed to the transfer of ESTs, particularly technologies which address global environmental problems such as climate change.

20. As regards ODA, it was noted that it could directly contribute to technology transfer by improving regional and local information networks, creating awareness, and by being used to fund trade fairs, seminars etc. Conversely, some experts felt that the primary role of ODA was not to transfer technology but to create an enabling environment for such transfers.

21. Several experts said that in addition to the adaptation of existing technologies, financial mechanisms should promote research and development (R&D) activities in developing countries for the generation of new technologies to achieve the objectives of MEAs. In the context of the Montreal Protocol, it was noted that although the Multilateral Fund had not finalized guidelines for financing the dissemination of technologies for the production of ODS substitutes, interim guidelines for funding the closure or adaptation of ODS production facilities were available.

Financial mechanisms and market-based instruments

22. Many experts acknowledged that although ODA had been diminishing over the last few years, it continued to play an important role, particularly in capacity-building and institutional development in developing countries. Also, it could play a role in facilitating the development of country programmes to implement MEAs.

23. Some experts stressed the need to further explore innovative approaches to financial mechanisms, such as national environmental funds, green investment funds quoted in international stock markets, and joint ventures on sustainable development projects. Some experts suggested that investment in national green funds in OECD countries which are tax-free may be another mechanism for promoting investment in sustainable development projects in developing countries. In addition, stock markets could be used to generate green funds, but this would require more capacity-building in developing such instruments.

24. Some experts noted that ODA can also be used to create trading opportunities for green products, e.g in the areas of ornamental plants and packaged food, through the creation of a fund to meet the incremental costs to producers, or through the development of umbrella trademarks for marketing products directly from producers.

25. Discussions on market-based instruments focused on joint implementation and emissions trading in the context of climate change. An expert presented the national experience with an emissions trading scheme related to acid rain in the United States. The expert emphasized that environmental benefits had been achieved at substantially reduced cost compared with regulatory measures and that

valuable lessons could be drawn from this experience for shaping a possible international emissions trading system for greenhouse gases.

26. An expert made a presentation of a proposal, which had been made by Brazil, for the creation of a Clean Development Fund. The expert expressed the view that this proposal had a role to play in the context of positive measures which could help developed and developing countries achieve the objectives of the United Nations Framework Convention on Climate Change (UNFCCC). He further noted that this proposal was supported by G77 and China.

27. Several experts from developing countries expressed concern that joint implementation (JI) could distract attention from the meeting of certain obligations of Annex 1 Parties under the UNFCCC, particularly those relating to technology transfer and finance. In the view of some of these experts, JI was a supplementary tool in the context of the UNFCCC and the design of JI schemes should give full attention to the promotion of technology transfer in accordance with priorities of the host country. Some experts noted that so far activities implemented jointly (AIJ) projects had been implemented only in a few developing countries and that more countries which were interested in JI should benefit.

28. One expert, reporting on a recent meeting on positive measures, pointed out that for host countries which voluntarily participate in joint implementation schemes, the value of the projects that transfer energy-efficient technologies may be greater than projects promoting carbon sequestration.

The role of incentives for biodiversity conservation and for promoting sustainable development

29. Experts stressed the need to provide incentive measures at national, regional and international levels to promote the conservation and sustainable use of biological diversity. Several experts noted that this could be done by enhancing the capabilities of developing countries, both to add value to biodiversity resources and to compete in the emerging markets for these resources, while improving the functioning of those markets. The private sector and partnership approaches, fully involving local and indigenous communities, can be an important instrument in meeting the objective of adding value to biological resources. Several experts encouraged UNCTAD's collaboration with the Convention on Biological Diversity (CBD) Secrétariat in this area.

30. Among positive measures to achieve sustainable development, several experts noted that access to information is an important factor to promote scientific research and the development of bio-industries in the private sector in developing countries. In this regard, one expert suggested that national and international information centres for commerce and biodiversity be established. A number of experts noted that UNCTAD could play an important role in this context.

31. Some experts expressed the view that biodiversity-rich countries should give consideration to the promotion of cooperation among all stakeholders to enhance the positive effects of incentives. Many experts said that UNCTAD could play a role in networking and in encouraging debate on these issues.

32. It was recognized that the private sector could play an important role in making biodiversity a tool for sustainable development in biodiversity-rich countries. With regard to the potential for developing countries to benefit from bio-business, it was recognized that countries are confronted with two options:

(i) being a relatively low-risk supplier of low-value-added samples, or (ii) investing significantly in initial stages of molecular discovery by sharing risks and benefits in the longer term with a view to adding value to biological resources.

33. It was noted that to create high-quality commercial partnerships, developing countries would need (i) to have a simple and clear legislative framework in place, and (ii) to develop specific arrangements to foster comparative advantages in particular uses of biodiversity. Some experts noted that there was a need to bring to the debate the issues of sovereignty and IPRs.

34. Experts suggested that sustainable development of biological resources is better achieved when local and indigenous communities have an economic stake in protecting biodiversity. The role of traditional knowledge is an important aspect to be taken into account in any national conservation strategy. Several experts suggested that as a complement to national and international legislation, it is important to promote the fully informed and effective participation of these communities in all aspects of the development and implementation of packages of positive measures if the aim of sustainable development through effective partnerships is to become a reality.

35. Some experts noted that an important way to share benefits from biological resources is to share risks and benefits among all stakeholders while generating discoveries. Some experts referred to the need to operationalize the three components of benefit-sharing: (i) ownership, (ii) origin of resources and (iii) capacity-building to assist developing countries in identifying the potential of biological resources.

36. It was noted that patent offices could be important and inexpensive sources of information for developing countries on available technologies. In this context, the Spanish Office of Patents and Trademarks offered to collaborate with UNCTAD within the framework of the CBD to identify such technologies.

37. One expert said that patent offices could also provide useful information on the sources of origin of biological resources.

38. The need to analyse certification mechanisms was also raised by some experts.

39. As complementary to the regulatory framework, experts noted the need for integrated packages of incentive measures for conservation and sustainable development. In this regard, a number of experts encouraged UNCTAD's BIOTRADE Initiative.

40. The Executive Secretary of the CBD, in a communication to the Expert Meeting, referred to the BIOTRADE Initiative as "an example of programmes that aim to further the three objectives of the Convention". He encouraged it as an activity in support of the implementation of the Convention and linked to achieving sustainable development. He informed the Expert Meeting that UNCTAD and the CBD Secretariat were going to sign a Memorandum of Understanding in order to further collaboration between the two institutions in relevant work areas.

II. ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

41. Pursuant to a decision taken by the Commission on Trade in Goods and Services, and Commodities at the second part of its first session (19-21 February 1997)1/, the Expert Meeting on Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements was held at the Palais des Nations, Geneva, from 3 to 5 November 1997. The Meeting was opened on 3 November 1997 by Mr. Rubens Ricupero, Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

42. At its opening meeting, the Expert Meeting elected the following officers to serve on its Bureau:

Chairperson:	Ms. Lilia R. Bautista	(Philippines)
Vice-Chairperson-cum-Rapporteur:	Mr. David Noble	(Australia)

C. Adoption of the agenda

43. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in TD/B/COM.1/EM.3/1. Accordingly, the agenda for the Meeting was as follows:

1. Election of officers
2. Adoption of the agenda
3. Positive measures to promote sustainable development, particularly in meeting the objectives of multilateral environmental agreements (MEAs)
4. Adoption of the report

1/ See Report of the Commission on Trade in Goods and Services, and Commodities on its first session (TD/B/44/5-TD/B/COM.1/6), annex I, part B, para. 3 (a).

D. Documentation

44. For its consideration of the substantive agenda item (item 3) the Expert Meeting had before it a document by the UNCTAD secretariat entitled "Positive measures to promote sustainable development, particularly in meeting the objectives of multilateral environmental agreements" (TD/B/COM.1/EM.3/2).

E. Adoption of the report

45. At its closing meeting, on 5 November 1997, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting, under the authority of the Chairperson, to include the Chairperson's summary of the experts' informal discussions (see section I).

ANNEX

ATTENDANCE */

1. Experts from the following States members of UNCTAD attended the Meeting:

Argentina
Australia
Bahrain
Belarus
Brazil
Brunei Darussalam
Canada
Central African Republic
China
Colombia
Costa Rica
Cuba
Czech Republic
Dominican Republic
Egypt
Ethiopia
Germany
Guatemala
Honduras
Iran (Islamic Republic of)
Italy
Jamaica
Japan
Lebanon
Luxembourg
Madagascar
Mexico
Morocco
Netherlands
New Zealand
Nicaragua
Pakistan
Panama
Paraguay
Peru
Philippines
Rwanda
Saudi Arabia
Senegal
Singapore
South Africa
Spain
Sri Lanka
Sudan
Swaziland
Switzerland
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Yemen
Zambia

2. The Department of Development Support and Management Services of the United Nations, the Economic Commission for Europe and the United Nations Environment Programme were represented at the Meeting.

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*/ For the list of participants, see TD/B/COM.1/EM.3/INF.1.

3. The following specialized agencies and related organizations were represented at the Meeting:

World Health Organization
World Meteorological Organization
World Intellectual Property Organization
United Nations Industrial Development Organization

The International Atomic Energy Agency and the World Trade Organization were also represented at the Meeting.

4. The following intergovernmental organizations were represented at the Meeting:

Agency for Cultural and Technical Co-operation
Arab Labour Organization
Organisation for Economic Co-operation and Development
Central African Customs and Economic Union

5. The following non-governmental organizations were represented at the Meeting:

General Category

World Wide Fund for Nature International

Special Category

International Union for Conservation of Nature and Natural Resources

6. The following organization, specially invited by the secretariat, attended the Meeting:

World Business Council for Sustainable Development

Panellists

The case for positive measures

Ms. Asa GRANADOS, Programme Officer, Basel Convention Secretariat, Geneva
Mr. Thilo MARAUHN, Max Planck Institute on Foreign Public Law and International Law, Heidelberg, Germany
Mr. Frits SCHLINGEMANN, European Director, UNEP, Geneva
Mrs. Magda SHAHIN, Minister-Plenipotentiary, Ministry of Foreign Affairs, Cairo, Egypt

Experience in accessing environmentally sound technologies and capacity-building

Mr. Si AHMED, Chief, Ozone Cell, UNIDO, Vienna, Austria
Mr. Antony HETHERINGTON, Deputy Chief Officer, Secretariat of the Multilateral Fund for the Montreal Protocol, Montreal, Canada

Panellists (continued)

Mr. Sitanon JESDAPIPAT, Director, National Resource Management Project, Thailand Environment Institute, Bangkok, Thailand
Mr. René van BERKEL, IVAM Environmental Research, University of Amsterdam, Netherlands
Mr. Jayashree WATAL, Fellow, George Washington University, Faculty of Law and Economics, United States of America

Financial resources for promoting sustainable development

Mr. Raul GARRIDO, Ministry of Science, Technology and Environment, Department for Environmental Policy, Havana, Cuba
Mr. Ron LANDER, Ministry of Development Assistance, The Hague, Netherlands
Mr. K.M. SARMA, Chief, Ozone Secretariat, UNEP, Nairobi, Kenya

The role of market-based instruments in promoting sustainable development

Mr. Ramakrishna KILAPARTI, Senior Associate, International Environmental Law, Woods Hole Research Center, Woods Hole, Mass., United States of America
Ms. Bernarditas MULLER, Director, Office of the United Nations and International Organizations, Department of Foreign Affairs, Manila, Philippines
Mr. Kai-Uwe SCHMIDT, Programme Officer, Financial Mechanism, Framework Convention on Climate Change, Bonn, Germany

The role of incentives for biodiversity conservation and for promoting sustainable development

Mr. Nicolas GOUGH, General Manager, AMRAD Discovery Technologies, Pty Ltd, Victoria, Australia
Mr. Nicolas MATEO, General Coordinator for Biodiversity Prospecting, National Institute on Biodiversity (INBio) Heredia, Costa Rica
Ms. Katy MORAN, Director, The Healing Forest Conservancy, Washington D.C., United States of America
Mr. A.J. ZAKRI, Chairman, Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to the Convention on Biological Diversity (CBD), Bangi, Malaysia

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